to bind their principals, the other members. Besides, the members may easily provide for making the official knowledge of their officers their own. Certainly actual notice to each individual of hostile legal proceedings seems as sure here as in the common instances of service by publication and substituted service; yet the constitutionality of both these methods of serving process has often been upheld.[12] While the present decision seems the first on the exact point at issue, a similar result has been reached in the case of joint debtors;[13] and the modern commercial instinct would surely tend towards the decision of the Vermont court.

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RECOVERY AGAINST A FRAUDULENT DEFENDANT IN A SUIT BETWEEN PARTIES TO AN ILLEGAL CONTRACT. — As a general rule, parties to an illegal contract cannot maintain a suit either to enforce the contract or recover damages for its non-performance; or to recover money or property transferred to the defendant in accordance with its terms.[1] Certain exceptions to this rule, which do not depend upon the circumstances under which the illegal contract was made, but upon its very nature, concern this discussion but little and will be mentioned only for the sake of clearness. They are, roughly, cases where it is thought that public policy is best served by allowing recovery to one party who is deemed less in fault. Instances are cases of marriage brokerage,[2] and of statutes declaring certain contracts illegal, but imposing a penalty upon one party only.[3]

Turning now from cases where recovery if allowed depends upon the nature of the illegal contract, let us consider the cases where recovery is allowed in the particular suit before the court on account of the peculiar circumstances under which the illegal contract was formed, though apart from such circumstances no recovery would be allowed. Recovery may be had where the defendant occupied such a position that the plaintiff was accustomed to, and did, rely upon the defendant's judgment rather than upon his own, as in the cases of guardian and ward,[4] and attorney and client.[5] But even if there be such a relation, if the plaintiff acted upon his own judgment, he cannot recover.[6] The question now arises whether we shall allow recovery where, without there being any such relation, the defendant has been guilty of fraud in inducing the plaintiff to enter into the contract or of fraud in the performance of it, though the plaintiff had full knowledge of the illegality. It will be seen that this is not a case analogous to the preceding established exception, for that must be based upon a theory of the plaintiff's lack of responsibility for the illegal contract, while in this case there can be no question on that score. The sole question raised here is whether or not the defendant's additional guilt can give basis for recovery by the plaintiff. But in no case, whether defendant was fraudulent or not, was there any question as to his liability, the fatal objection being as to the plain-

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12 Mason *v.* Messenger, 17 Ia. 261; Continental, etc., Bank *v.* Thurber, 74 Hun 632; aff. 143 N. Y. 648.

13 Harker *v.* Brink, 24 N. J. Law 333.

1 Stewart *v.* Thayer, 170 Mass. 560.

2 Duval *v.* Wellman, 124 N. Y. 156.

3 Smart *v.* White, 73 Me. 332; Tracy *v.* Talmage, 14 N. Y. 162.

4 Hatch *v.* Hatch, 9 Ves. 292; *cf.* Boyd *v.* De la Montagnie, 73 N. Y. 498.

5 Ford *v.* Harrington, 16 N. Y. 285.

6 Roman *v.* Mali, 42 Md. 513.

tiff's inability to recover, in view of his own misconduct. And the plaintiff's misconduct is equally grave in the presence or absence of fraud in the defendant.[7]

In a recent case, however, the Supreme Court of Missouri held that the plaintiff could recover under such circumstances on the ground of public policy. *Hobbs* v. *Boatright*, 93 S. W. Rep. 934.[8] This is in accord with a considerable body, possibly the majority, of decisions,[9] the cases being nearly evenly divided. In this case the recovery was in tort, for fraud and deceit. But as the cause of action arises only through the existence of, and the plaintiff's participation in, the illegal contract, it seems that the plaintiff should on principle be barred in tort as well as in contract or quasi-contract. The cases, too, make no distinction in result between the two forms of action. The argument of the court, that on public policy recovery by the plaintiff is desirable, in spite of the plaintiff's wrongdoing, on account of the unusual guilt of the defendants, seems to be open to objection. It would seem better for the court to refuse to interfere in illegal contracts, once entered into by a plaintiff fully responsible for his wrongdoing, than to protect such a plaintiff and thus to encourage the belief that people may enter into illegal contracts and transactions secure in the knowledge that the law will protect them from all fraud. It is not the office of the law to guarantee to the gambler a square deal. The illegal contract should be outlawed in its entirety, and no rights allowed to issue from it in any way, in order to discourage all from entering upon it. The courts are naturally anxious to punish the unscrupulous defendant in these cases, but that should be left to the criminal law.

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CONSTRUCTION OF STATUTES AFFECTING THE CONSTITUTIONAL PRIVILEGE AGAINST SELF-CRIMINATION. — This question of statutory construction has been raised by a group of recent important decisions. *United States* v. *Armour & Co.*, 142 Fed. Rep. 808 (Dist. Ct., N. D. Ill.); *State* v. *Murphy*, 107 N. W. Rep. 470 (Wis.); *Rudolph* v. *State*, 107 N. W. Rep. 466 (Wis.). The statute involved in the federal case was the Act of Feb. 11, 1893,[1] providing that "no person shall be excused from testifying . . . before the Interstate Commerce Commission . . . on the ground that the testimony . . . may tend to incriminate him. . . . But no person shall be prosecuted . . . on account of any transaction, matter or thing concerning which he may testify . . . before said Commission"; and in the other cases a state duplicate of that statute was under consideration.[2] The federal statute was enacted by Congress in deference to a decision of the Supreme Court in Counselman *v.* Hitchcock [3] holding a prior immunity statute (providing merely that evidence exacted from a witness should not be used against him) unconstitutional, as infringing the fifth amendment to the Constitution, since it did not protect the witness from the indirect use of his testimony against him.

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[7] Abbe *v.* Marr, 14 Cal. 210; Kitchen *v.* Greenabaum, 61 Mo. 110.

[8] In this case the plaintiff was himself fraudulent, yet recovered on the ground of defendant's fraud. See statement of facts, p. 72.

[9] Catts *v.* Phalen, 43 U. S. 376; Webb *v.* Fulchire, 3 Ired. (N. C.) 485. *Contra*, Abbe *v.* Marr, *supra*; Kitchen *v.* Greenabaum, *supra*.

[1] 27 Stat. at L. 443, c. 83.

[2] Wis. L. 1901, p. 106, c. 85.

[3] 142 U. S. 547.